

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAVE SCARDINA, individually and on)	
behalf of a class,)	
)	
Plaintiff,)	11-cv-3149
)	
v.)	Judge George W. Lindberg
)	
MIDLAND CREDIT MANAGEMENT, INC.;)	Magistrate Judge Jeffrey T. Gilbert
MIDLAND FUNDING LLC;)	
ENCORE CAPITAL GROUP, INC,)	
)	
Defendants.)	

REPORT OF RULE 37 CONFERENCE

Pursuant to the Court's order of August 17, 2011, Plaintiff Dave Scardina and Defendants Midland Credit Management, Inc., Midland Funding, LLC, Encore Capital Group, Inc., by and through their respective undersigned counsel, hereby submit the following report and agreed plan related to Plaintiff's Motion to Compel [Dkt. No. 34].

I. Discovery Disputes: Following the August 17, 2011 hearing on Plaintiff's Motion to Compel, three discovery disputes remained unresolved. The parties have reached an agreement with respect to all three of those disputes.

(A) Class Discovery (Request for Admission Nos. 32-35; Interrogatory Nos. 48-52; Document Request Nos. 1, 6, 11-12)

The parties have agreed that Defendants will produce a sample of 250 files involving calls to cellular telephones in response to the above referenced requests. Defendants have agreed that they will conduct a search to determine (1) calls placed by Defendants' dialing system; (2) with Illinois area codes; (3) where the calls were to a cell phone, which Defendants

will determine by conducting a scrub of the numbers. Of the accounts that meet the above criteria, Defendants will produce the entire file including the collection notes and all documents regarding the account, including but not limited to the account application. If technically feasible and reasonably practicable, at this time, Defendants will also identify those numbers where the caller received a hold message, a voice message previously recorded and played at a later time, similar to those identified in Plaintiff's complaint in Paragraph 39. Defendants have agreed to preserve the remainder of the relevant portions of class files and information in the event that a class is certified.

Defendants have indicated that they will need approximately 3 months to produce the 250 sample and that they intend to seek from the Court an extension on the current discovery schedule.

(B) Contracts Subject to Confidentiality Provision: (Document Request Nos. 22 and 29)

Several of the documents responsive to Plaintiff's discovery requests are subject to a confidentiality provision which prevent Defendants from producing the document without the other party's consent or a court order. Defendants have been unable to obtain the consent of the other party. If consent is not obtained prior to the August 31, 2011 hearing, Plaintiff requests that the Court enter an order compelling the production of the contracts under a protective order with the confidentiality designation of

Attorneys' Eyes Only.

- (C) Interrogatory No. 57: The parties have reached an agreement with respect to this interrogatory. Defendants are going to provide a supplemental response which will include a detailed explanation of the protocol used to send or input phone numbers to be called into Defendants' dialing systems. Plaintiffs are not requesting the algorithm used to place calls with Defendants' dialing system.

II. Conclusion

Plaintiff respectfully requests that the Court enter an order compelling the production of any contract(s) which is responsive to Document Request Nos. 22 and 29 which are subject to a confidentiality provision if not produced by August 31, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on August 24, 2011, I electronically filed the foregoing documents via the CM/ECF System which caused notice to be delivered to the following:

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